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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C.

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )

Confidential Treatment of )

Wire Center Line Count Data )

CC Docket No. 96-45 /  
(DA 00-1068)

**REPLY COMMENTS OF ANCHORAGE TELEPHONE UTILITY**

Anchorage Telephone Utility (ATU) submits these comments in reply to the comments filed in the above-captioned proceeding.

Every carrier that filed comments in this proceeding recognized the commercially sensitive nature of line count data at the wire center level.<sup>1</sup> The record shows that line count data can reveal important information about a carrier's business, its customers, and its growth over time.<sup>2</sup> If this information were disclosed, competitors could use it to evaluate a carrier's business plans, target investment, and selectively market their services to areas with the most customers.<sup>3</sup> Exemption 4 of FOIA was designed to protect against this type of competitive harm by permitting federal agencies that require submission of this information to withhold it from disclosure.<sup>4</sup> The record reaffirms that the confidential nature of line count data should be maintained.

While the carriers are largely in agreement as to the commercially sensitive nature of line count data, the state commission's are divided on whether line count data should be kept

<sup>1</sup> GTE Comments at 3; Bell Atlantic Comments at 2; SBC Comments at 2; AT&T Comments at 2-6.

<sup>2</sup> See, e.g., SBC Comments at 2.

<sup>3</sup> See, e.g., GTE Comments at 3.

<sup>4</sup> 5 U.S.C. § 552(b)(4). See S. Rep. No. 89-813, at 9 (1965).

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confidential.<sup>5</sup> To be sure, if a carrier makes line count data voluntarily available<sup>6</sup> or if such information is lawfully made available from another source,<sup>7</sup> the justifications for maintaining confidential treatment of the same information at the federal level are diminished. ATU, however, does not make its line count data publicly available and is not required to disclose that information to the Regulatory Commission of Alaska.<sup>8</sup> Under those circumstances, the Commission should respect a carrier's decision on the need to maintain confidentiality of line count data and withhold such information from disclosure under Exemption 4 of FOIA.<sup>9</sup>

The record also demonstrates that there are no compelling reasons to disclose line count data for carriers that do not receive high-cost support. The Commission does not use actual line count data as an input in its high-cost support model.<sup>10</sup> Moreover, to the extent that actual line count data is used, and the Commission determines that outside verification of the calculations under the model is necessary, the Commission may issue a protective order, as it has done in the

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<sup>5</sup> Compare, e.g., Comments of New York Department of Public Service at 1 (advocating disclosure) with Comments of the Public Utility Commission of Texas at 3 (advocating confidential treatment of line count data).

<sup>6</sup> See Montana PSC Comments at 1-2.

<sup>7</sup> See Comments of New York Department of Public Service at 1 (stating that it discloses switch level information from carriers).

<sup>8</sup> See Comments of the Regulatory Commission of Alaska at 2.

<sup>9</sup> The test for confidentiality proposed by the Vermont Public Service Board does not comport with the standard for confidentiality established by Exemption 4. All that is needed is "actual competition and the likelihood of competitive injury." *Public Citizen Health Research Group v. FDA*, 704 F.2d 1280, 1291 (D.C. Cir. 1983). ATU has met this burden, as shown in its initial comments.

<sup>10</sup> Bell Atlantic Comments at 6; AT&T Comments at 7.

past, to help ensure that line count data is used only for such purposes, and not used by competitors to gain an upper hand in the market.<sup>11</sup>

Finally, to the extent that the Commission publicly releases line count data, it must release the data for both incumbent and non-incumbent local exchange carriers in order to maintain competitive neutrality.<sup>12</sup> ATU has lost upwards of 30% of its local market to competitors, including AT&T Alascom. Thus, contrary to AT&T's contention,<sup>13</sup> line count data is extremely competitively sensitive for ATU. The Commission recognized the importance of competitive neutrality in this area when it determined that competitive neutrality warranted the disclosure of line count data for carriers receiving high-cost support.<sup>14</sup> There is no reason to conclude that competitive neutrality is any less important here. While competitively neutral disclosure of line count data is no substitute for maintaining the confidential treatment of this information for all local exchange carriers that do not receive universal service support, competitively neutral disclosure is necessary if the Commission determines that disclosure is warranted.

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<sup>11</sup> See Bell Atlantic Comments at 6; AT&T Comments at 7 n.11 (advocating use of protective order for non-incumbent local exchange carriers).

<sup>12</sup> See Comments of the Regulatory Commission of Alaska at 3.


<sup>13</sup> See AT&T Comments at 6 n.10.

<sup>14</sup> *Federal-State Joint Board on Universal Service*, Order, CC Docket No. 96-45, FCC 00-125, at ¶¶ 15-17 (rel. April 7, 2000).

For the foregoing reasons, and for the reasons stated in ATU's initial comments, the Commission should maintain confidential treatment of line count data submitted on a wire center basis.

Dated: July 17, 2000

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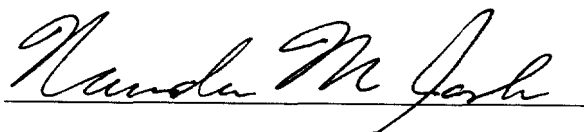
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